

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

In Re: Methyl Tertiary Butyl Ether (‘MTBE’)  
Products Liability Litigation

**This document relates to:**

*Commonwealth of Puerto Rico, et al. v. Shell  
Oil Co., et al.*, Case No. 07-cv-10470

Master File No. 1:00-1898 (SAS)

MDL 1358

M21-88

Civil Action

**PLAINTIFF’S RULE 56.1 STATEMENT IN OPPOSITION TO DEFENDANTS’ RULE  
56.1 STATEMENT OF MATERIAL FACTS IN SUPPORT OF SHELL DEFENDANTS’  
MOTION FOR SUMMARY JUDGMENT**

**PLAINTIFF'S RULE 56.1 STATEMENT IN OPPOSITION TO THE MOTION FOR SUMMARY JUDGMENT OF THE SHELL DEFENDANTS**

Pursuant to Rule 56.1 of this Court's Civil Rules, Plaintiff the Commonwealth of Puerto Rico ('Commonwealth') respectfully submits the following opposition to the statement of material facts submitted by the Shell Defendants (identified in opposition) in support of the motion for summary judgment of the Shell Defendants.<sup>1</sup>

**Sol Puerto Rico Limited**

<b>DEFENDANTS' UNDISPUTED MATERIAL FACTS AND ALLEGED SUPPORTING EVIDENCE</b>	<b>PLAINTIFF'S RESPONSE AND EVIDENCE</b>
1. Sol Puerto Rico Limited ('Sol') is a separate defendant in this case. Declaration of Ruben F. Reyna ('R. Reyna Decl.')[13].	1. Undisputed, but irrelevant to any issue in this motion.
2. Throughout the relevant time period, the Shell-branded gasoline stations in Puerto Rico, including USTs and dispensing equipment at those stations, were owned, operated, and/or leased by Sol, which was formerly known as The Shell Company Puerto Rico Limited ('SCPRL'). R. Reyna Decl. ¶ 4, Ex. 2, Plaintiffs' Supplemental Responses to Defendants' First Set of Contention Interrogatories and Requests for Production of Documents, Interrogatory No. 2, p. 19 (Mar. 14, 2014); <i>Id.</i> ¶ 2, Ex. 1, Declaration of Dario E. Amadeo, ¶2.	2. Disputed. The evidence shows that, prior to 2006, Shell Int'l had involvement in the operation of retail stations owned by Shell PR in Puerto Rico and Shell Int'l was involved in many aspects of Shell PR's business. <i>See</i> Plaintiff's Rule 56.1 Statement of Undisputed Facts ¶¶ 1-3 ('Plaintiffs 56.1').
3. In order to supply those stations, Sol acquired gasoline from various sources, including some of the Shell Defendants, but also from various other parties that are unrelated to Shell that are also named as defendants in this case. R. Reyna Decl. ¶ 4, Ex. 2, Plaintiffs' Supplemental Responses to Defendants' First Set of Contention Interrogatories and Requests for Production of Documents, Interrogatory No. 2, pp. 19-21 (Mar. 14, 2014) ); <i>Id.</i> ¶ 2, Ex. 1, Declaration of Dario E. Amadeo, ¶7.	3. Disputed. Between 1988 and 2006, the Shell Defendants supplied millions of gallons of MTBE gasoline to Shell Puerto for distribution to Shell stations, thus placing these defendants in the chain of supply. The evidence shows that MTBE was present at detectable levels in large volumes of this gasoline.  The evidence shows that Shell PR distributed this gasoline to the Shell Trial Site and Shell stations across Puerto Rico. Shell PR leased bulk gasoline storage tanks at the Cataño Terminal, located just outside of San Juan, from

<sup>1</sup> Plaintiff notes that the opposition Rule 56.1 statement was twenty-four (24) pages with only Defendants' Undisputed Material Facts.

approximately 1947 to April 2006, and last received gasoline at this facility around July-August 2004. (O'Reilly Decl. ¶2. By 1985, all gasoline delivered to Shell at the Cataño Terminal came by barge or tanker. (Barnhart Decl. Ex. 1, Olivera Depo. at 32:5-11.) All gasoline distributed by Shell PR from the Cataño Terminal was Shell branded gasoline. (*Id.* at 29:15-17.) Since 1979 most, if not all, of the gasoline supplied to the Shell Trial Site service station came from the Cataño Terminal. (O'Reilly ¶3.)

### **Shell International 1979-1998**

Shell Int'l admits it supplied Shell PR with 'finished gasoline from third parties' up to 1998. (O'Reilly ¶17) Shell Int'l supplied gasoline to Shell PR from the Hovensa, St. Croix, and Maravan (later PDVSA), Curacao refineries. (O'Reilly Decl. ¶18, Shell Int'l Resp. to Fourth Rogs at 8-9; Barnhart Decl. Ex. 1 (Charman Depo. at 32:4-9.)

A 1987 supply contract between Shell PR and Shell Western Services (another affiliate of Shell Int'l) providing for gasoline from 'Maraven' allowed for 'MTBE PCT Volume Max. 10' (O'Reilly Decl., Ex. 1, Memorandum, Product Supply Contract.) This contract thus allowed for MTBE in gasoline.

In 1988, Shell Int'l division, Shell International Trading Company, entered into an evergreen contract to supply 3,000 barrels per day of premium and 5,000 barrels per day regular gasoline to Shell PR for delivery via tanker to San Juan (i.e. Cataño Terminal). (O'Reilly Decl. Ex. 1, White Oils Agreement at ¶B.1-4; Barnhart Decl. Ex. 1, Charman Depo. at 66:15-23.) Premium gasoline specifications in the contract allowed 'MTBE % vol max 10' (*Id.* at App. - 1A.)

During the evergreen contract, on March 5, 1996, Hess delivered a shipment of 60,000 barrels of gasoline to Shell PR at Cataño which

contained MTBE at 2.51% for mid-grade and 8.9% for premium grade. (O'Reilly Decl., Ex. 1.) Voluminous shipment records produced by the Hess/Hovensa/Hovic defendants show that after 1994, Hess/Hovic/Hovensa supplied substantial volumes of MTBE gasoline to Shell PR pursuant to the agreements with Shell Int'l. (Declaration of Nathan Short filed in support of Plaintiffs Opposition to Defendants' Motion for Summary Judgment re Lack of Causation ('Short Decl.').) Records show that Hess/Hovic/Hovensa delivered substantial volumes of MTBE gasoline to Shell PR pursuant to the agreements with Shell Int'l. (Short Decl.)

Curacao refinery Certificates of Quality in 1991-1992 show that MTBE was present at concentrations of 13.5%, 14.6%, 14.1%, 8.8%, and 3.7% in gasoline shipped to Puerto Rico, including gasoline shipped to Shell PR. (O'Reilly Decl. Ex. 1.) MTBE was known to be generally present in gasoline associated with Maraven (known as PDVSA). (Barnhart Decl. Ex. 1, Watson Depo. at 307:6-10, 412:6-17.)

Shell PR admits that MTBE gasoline was supplied in the 1985-1998 Shell Int'l time period. Shell PR's Chairman, Juan Vasquez, stated that with respect to Shell PR '[h]istorically, in Puerto Rico the use of MTBE started in 1988 . . .' (O'Reilly Decl., Ex. 1.) Shell PR personnel stated that gasoline containing MTBE had been imported by Shell PR at least until the "mid-90s." (O'Reilly, Decl., Ex. 2.)

The evidence thus shows that substantial volumes of MTBE gasoline were, in fact, supplied by Shell Int'l to Shell PR from 1985 to 1998.

#### **Shell Western: 1998-2003**

Shell Western admits it supplied Shell PR from 1998 up to November 2003. (O'Reilly Decl., ¶6.) In September 1997, Shell Western took over Shell PR's supply of gasoline from

Hovic/Hovensa. (Barnhart Decl., Ex. 1, Charman Depo. at 37:18-38:6.) In January 1998, Shell Western signed a contract with Hovensa to supply gasoline to Shell PR until 2004 when the Cataño Terminal closed. (*Id.*, Charman Depo. at 38:7-13.)

February 2000 and 2002 contracts between Shell Western and Shell PR to supply 160,000 bbls per month of premium and 210,000 bbls per month of regular gasoline states that all gasoline supplied by Shell Western must meet Colonial Pipeline specifications. (O'Reilly Decl., Ex. 3, at ¶ 1-5; Ex. 18.) Shell witnesses confirmed that the Colonial codes referenced specifically permit the use of MTBE. (Barnhart Decl., Ex. 1, Charman Depo. at 76:20-78-7.) These contracts allowed for MTBE.

Records show that numerous shipments from Hovensa purchased by Shell Western for Shell PR contained substantial amounts of MTBE.

•May 1998, four shipments (160,000 bbls) delivered by Hovic to Cataño contained MTBE at levels ranging from .07% to .25%. (O'Reilly Decl., Ex. 3.)

•October 2002, four shipments (25,000 bbls) delivered by Hovic to Cataño contained MTBE at levels ranging from .12% to .13%. (*Id.*)

•October 2003, two shipments (25,000 bbls) delivered by Hovic to Cataño contained MTBE at 0.8%. (*Id.*)

Records show that between 1997 and 2004, Hess/Hovic/Hovensa delivered substantial volumes of MTBE gasoline to Shell PR pursuant to the agreements with Shell Western. (Short Decl.)

In 2000, Shell PR acknowledged that it "has marketed 1.4 MB Bls of mid-grade fuel, almost all containing MTBE at less than 3% over the past 5 years" (O'Reilly Decl., Ex. 3.)

The evidence shows that Shell Western supplied

millions of barrels of MTBE gasoline to Shell PR.

**Shell Oil Company 1990s-2003:**

Shell Oil admits that multiple shipments of gasoline manufactured by Shell's United States Deer Park and Norco refineries were supplied to Shell PR, and these refineries blended MTBE into gasoline beginning as early as 1979. (O'Reilly Decl., Ex. 19, Shell Defendants' Resp. to First Rgs at 3(b).) These refineries also started manufacturing MTBE for use in gasoline in 1992. (*Id.*) Shell, moreover, identified numerous "conventional" gasoline products as "petroleum products containing MTBE" in Shell's CMO#4 declarations. (O'Reilly Decl., Ex. 4, at 8-23.)

Many Shell Oil related entities were also involved in the chain of supply for MTBE gasoline to Puerto Rico.

Shell PR employee Ivan Cintron testified that if he wanted to purchase gasoline from any entity off-island then he had to "notify [Houston] immediately" so they could inspect tankers. (Barnhart Decl., Ex. 3, Cintron Depo at 56:2-9.) Mr. Bloomer, a 27-year Shell employee of Shell, confirmed that "[t]here was a standing [order] for all [Shell] locations that if you were going to come into a Shell location with another company's tankers, they had to be inspected for suitability . . . to come into a Shell facility. . . [t]here's a staff of marine individuals [employed by Shell Oil] whose job it is to inspect equipment . . ." (Barnhart Decl., Ex. 2, Bloomer Depo. at 125:18-126:25.)

During the late 1990s, Mr. Bloomer "received a call from Shell Puerto Rico requesting assistance" with "an alternative form of supply" (*Id.* at 44:17-45:12.]. He "approached" both Deer Park and Norco to see if these refineries were capable of "supplying Puerto Rico," and was able to secure gasoline supplies for Shell PR from Norco. (*Id.*

at 45:19-46:5.) The gasoline from Norco which Bloomer brokered likely contained MTBE.

Finally, Shell Oil was a direct“consignee” of a 1998 shipment from Hess to Shell PR of 109,961 bbls of mid-grade with .58 % MTBE and 80,242 bbls of premium gasoline with 1.65% MTBE. (O’Reilly Decl., Ex. 5.)

**i. Shell’s Deer Park Refinery**

Shell Oil owned Deer Park from 1979 to 1993. (O’Reilly Decl. ¶10; P. Bloomer Decl. (filed Set. 26, 2014) at 3.)

Deer Park started blending MTBE into gasoline in November 1979. *Id.* Deer Park blended MTBE it manufactured with gasoline from 1994 to 2003. (O’Reilly Decl. ¶17, Shell Defendants’ Resp. to First ROGs at 3(a); *see also* O’Reilly ¶10; P. Bloomer Decl. at 2.) All of the neat MTBE manufactured by Deer Park was blended into gasoline. (O’Reilly Decl. ¶19 Shell Defendants’ Resp. to First ROGs at 3(b).)

**ii. Shell’s Norco Refinery**

Shell Oil owned Norco from 1992 to 1998, and then Motiva owned Norco from 1998 to the present. (O’Reilly ¶10; P. Bloomer Decl. at 2.) Norco started blending MTBE into gasoline in October 1980. (*Supra.*) MTBE manufactured at Norco was blended into gasoline from 1995 to 2003. (O’Reilly Decl. ¶19, Shell Defendants’ Resp. to First ROGs at 3(a)-3(b); *see also* O’Reilly Decl. ¶10; P. Bloomer Decl. at 2.)

Shell admits that for“six to twelve months in the mid-1990’s, conventional gasoline was supplied from the NORCO Refinery and delivered to” Shell PR. (O’Reilly Decl. ¶10.) Spreadsheets prepared by Shell show that from 1995 to 1998 (the mid-1990s) the MTBE content of gasoline manufactured by Norco varied from 0% to 11.23%, and was even as high as 15.44%. (Barnhart Decl. Ex. 2, Bloomer Depo. at 49:22-23, 50:16-51:10, 52:23-53:7, 106:1-107:18,

130:1-15.]. Bloomer could not deny that this gasoline may have gone Shell PR. As noted above, Shell specifically identified numerous ‘conventional gasoline’ products as containing MTBE. (*Supra.*)

Motiva admits that Norco shipped gasoline to Puerto Rico during the time Motiva owned it. (*See* ¶ 62.) Ivan Cintron confirmed that Norco shipped gasoline to Shell PR between 2002 and 2008. (Barnhart Decl., Ex. 3, Cintron Depo. at 57:9-58:1.)

### **iii. Shell Atlantic Services**

Ivan Cintron stated that when “Hess approached him about supplying gasoline to Shell PR, he “got on the phone and called people in Houston . . .” to obtain approval. (Barnhart Decl., Ex. 3, Cintron Depo at 55:6-12.) If he wanted to purchase gasoline from any entity off-island then he had to “notify [Houston] immediately” so they could inspect tankers. (*Id.* at 56:2-9.)

On December 9, 1994, Ray Thomas of Shell Atlantic Services, accepted an offer from Hess to gasoline to Shell PR. (O’Reilly Decl., Ex. 6.) Shell Atlantic, conducted all contract negotiations with Hess on behalf of Shell PR. (*Id.*) Hess sent the final supply contract to Shell Atlantic for execution. (*Id.* at Ex. 6.)

Again, in January 1996, Shell Atlantic contacted Hess on behalf of Shell PR regarding “Term Gasoline Sale to Shell Puerto Rico.” (O’Reilly Decl., Ex. 6.) Shell Atlantic again negotiated the terms and received the final contracts for Shell PR. (*Id.*) Shell Atlantic also negotiated with Hess concerning the “Proposed Revisions to the Term Gasoline Agreement with Shell Puerto Rico.” (O’Reilly Decl., Ex. 6.)

Finally, in January 1997 Hess wrote to Shell Atlantic stating “[w]e refer to the above agreement, pursuant to which you purchase from Hess . . . , among other products, Low Sulfur



	<p>Diesel . . . for importation into Puerto Rico” (O’Reilly Decl., Ex. 6.)</p> <p>The correspondence makes it clear that Shell Atlantic, a “division of Shell Oil Company,” negotiated for substantial supplies of gasoline from Hess for Shell PR. Mr. Cintron said he communicated with Houston “about supply issues in Puerto Rico” . . . “almost every week.” (Barnhart Decl., Ex. 4, Cintron Depo at 56:23-25.)</p> <p>During the 1995 contract period, Hovic supplied six shipments of gasoline to Shell PR with MTBE concentrations ranging from 0.17% to 2.39%. (Short Decl.) From August 1996 to July 1997, Hovic supplied 17 additional shipments with MTBE concentrations ranging from 0.17% to 8/9%. (<i>Id.</i>)</p> <p>Shell Oil was in the chain of supply for gasoline delivered to Shell PR, and substantial amounts of this gasoline contained MTBE.</p>
4. Sol Investments Limited acquired all of the stock of SCPRL on June 13, 2006 and subsequently changed the name of SCPRL to Sol. R. Reyna Decl. ¶14.	<p>4. Undisputed, but irrelevant to any issue in this motion.</p> <p>Contrary to the Shell Defendants’ representations, the stock purchase by Sol in 2006 represented a change in Shell PR operations. Plaintiffs 56.1 ¶¶ 12-13.</p>
5. Sol clearly and unequivocally expressed its commitment to accept responsibility and liability, if it is proven, for the operations of SCPRL in this litigation. R. Reyna Decl. ¶ 4, Ex. 2, Plaintiffs’ Supplemental Responses to Defendants’ First Set of Contention Interrogatories and Requests for Production of Documents, Interrogatory No. 2, p. 19 (Mar. 14, 2014); <i>Id.</i> ¶ 2, Ex. 1, Declaration of Dario E. Amadeo, ¶2.	<p>5. Disputed.</p> <p>The contractual agreement between the Shell defendants and Sol as to allocation of liability arising from MTBE contamination does not shield the Shell defendants from liability to the Commonwealth for Shell’s own torts. “A strictly liable defendant <b><i>cannot reduce or eliminate its responsibility to the plaintiff for all injuries</i></b> caused by a defective product by shifting blame to other parties in the product’s chain of distribution who are ostensibly more at ‘fault,’ and therefore may be negligent as well as strictly liable. <b><i>The defendant’s recourse, if not precluded by good faith settlement principles, lies in an indemnity action.</i></b>” <i>Bostick v. Flex</i></p>

	<p><i>Equip. Co.</i>, 147 Cal. App. 4th 80, 92, 54 Cal. Rptr. 3d 28, 38 (2007) (emphasis added)</p> <p>The Shell Defendants are directly liable for their own tortuous conduct in supplying MTBE gasoline to Shell PR, failing to warn Shell PR about the environmental risks of MTBE, and failing to ensure that underground storage tanks at Shell service stations in Puerto Rico, including the Shell Trial site undertook appropriate precautions to prevent releases from USTs.</p>
<p>6. Plaintiffs contend in response to interrogatories that in January 1995, "Shell purchased 130,862.23 Barrels (5,496,213.66 U.S. gallons) of gasoline, with an MTBE content of 6.84% from Hess Oil Virgin Islands Corp. [HOVIC]." R. Reyna Decl. ¶4, Ex. 2, Plaintiffs' Supplemental Responses to Defendants' First Set of Contention Interrogatories and Requests for Production of Documents, Interrogatory No. 2, p. 14 (Mar. 14, 2014).</p>	<p>6. Disputed.</p> <p>As noted in ¶3 Shell Int'l had an evergreen contract with Shell PR that included supplying gasoline from Hess/Hovic/Hovensa. Shell Int'l admitted in discovery responses that it supplied gasoline to Shell PR from third parties such as Hess/Hovic/Hovesan "up to 1998."</p> <p>Additionally, as noted in ¶3, to the extent Shell PR was the buyer for this particular shipment from Hess, the evidence shows that Shell Atlantic, a division of Shell Oil located in Houston, brokered the purchase.</p>
<p>7. Plaintiffs allege that gasoline supplied to Sol (f/k/a SCPRL) by non-Shell sources, including other Defendants, contained MTBE. R. Reyna Decl. ¶4, Ex. 2, Plaintiffs' Supplemental Responses to Defendants' First Set of Contention Interrogatories and Requests for Production of Documents, Interrogatory No. 2, pp. 19-21 (Mar. 14, 2014).</p>	<p>7. Disputed.</p> <p>The Commonwealth does not allege that all MTBE gasoline was supplied by parties other than the Shell Defendants. As explained in detail above, there is substantial evidence that the Shell defendants were a primary source of MTBE gasoline supplied to Shell PR from 1985 to at least 2006. Shell is responsible for its supply of this gasoline to Puerto Rico, and it is irrelevant to the Shell Defendants' liability if other parties contributed some of the MTBE gasoline that Shell PR delivered to the trial site or any other Shell station in Puerto Rico. (See Plaintiffs' Opposition to Defendants Motion for Summary Judgment for Lack of Causation.)</p>

**The Shell Defendants**

**Shell Chemical Yabucoa, Inc.**

<b>DEFENDANTS' UNDISPUTED MATERIAL FACTS AND ALLEGED SUPPORTING EVIDENCE</b>	<b>PLAINTIFFS' RESPONSE AND EVIDENCE</b>
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<p>8. SCYI is a Puerto Rico company formed in 2001 to acquire and operate the refinery and terminal facility located at State Road 901, Km 2.7, Camino Nuevo Ward in Yabucoa, Puerto Rico (the "Yabucoa Facility"). Declaration of Juan M. Lopez Vicente (J. Lopez Decl.) ¶4. On December 31, 2001, SCYI acquired the Yabucoa Facility from the Puerto Rico Sun Oil Company (PRSOC). <i>Id.</i> ¶4.</p>	<p>8. Disputed.</p> <p>As evidenced by the agreements outlined in 99 below between Shell Yabucoa and Shell PR, the Commonwealth disputes that Shell Yabucoa was formed solely to "acquire and operate the refinery and terminal facility . . ."</p>
<p>9. SCYI never owned or operated any gasoline service stations or underground storage tanks in Puerto Rico. <i>Id.</i> ¶ 5. The Yabucoa Facility did not have underground storage tanks. <i>Id.</i> ¶5.</p>	<p>9. Disputed.</p> <p>In October 2003, Shell PR assigned all of its 'Dealer Agreements' to Shell Yabucoa in order to transfer all "supply and delivery" obligations to Shell Yabucoa. (O'Reilly Decl., Ex. 7.) Shell Yabucoa thus had a direct relationship with the service stations, including responsibility for making deliveries of gasoline to the USTs. At the same time, Shell PR and Shell Yabucoa signed a Marketing and Distribution Services Agreement which reduced Shell PR's role to provide marketing support for the sale of gasoline to Shell stations in Puerto Rico. (O'Reilly Decl., Ex. 7.) The Governing Guide states that Yabucoa was acquired to produce chemicals, and that Shell PR is assigning its dealer agreements to provide Shell Yabucoa with a market for its gasoline products. (O'Reilly Decl., Ex. 7.)</p>
<p>10. SCYI began gasoline refining and blending operations in or around June 2002 and used a loading rack for gasoline distribution by tanker truck to supply domestic customers as well as a small dock at the Yabucoa Facility for gasoline distribution by ship or barge to supply domestic, U.S. and foreign customers. <i>Id.</i> ¶6.</p>	<p>10. Undisputed.</p>
<p>11. From 2002 to 2008, SCYI refined gasoline at the Yabucoa Facility for sale and distribution in Puerto Rico. <i>Id.</i> ¶7. When the refinery was in operation, most of the gasoline sold by SCYI was manufactured from crude refined in Yabucoa. Gasoline was occasionally imported to supplement production in order to meet demand. <i>Id.</i> ¶7.</p>	<p>11. Disputed.</p> <p>Shell Yabucoa imported substantial amounts of gasoline during this time period, primarily from U.S. based refineries, including both Deer Park and Norco. (O'Reilly Decl., Ex. 7.) Since a number of large shipments in 2002 (150,000 to 140,000 BBLs) were never tested for MTBE content, it is not reasonable to infer that it was</p>

	not present, particularly for US based refineries. ( <i>Id.</i> ) Overall, Shell Yabucoa imported 4,904,399 BBLs of gasoline during this time period.
12. In May 2008, SCYI decided to cease refinery production at the Yabucoa Facility by shutting down the crude oil processing facilities at the Yabucoa Facility. <i>Id.</i> ¶8. This cessation of production of refined products was put into effect by July 2008. <i>Id.</i> ¶8. Thereafter, SCYI continued to operate the Yabucoa Facility as a terminal and continued to import refined products for storage, blending, and sale from the truck loading rack. <i>Id.</i> ¶8.	12. Undisputed.
13. In December 2010, SCYI was sold to Buckeye Caribbean Holdings Limited and SCYI became Buckeye Caribbean Terminals LLC. <i>Id.</i> ¶9.	13. Undisputed.
14. SCYI never made, stored, blended, used or marketed MTBE or gasoline with MTBE, apart from a few imported shipments containing MTBE below trace <i>de minimis</i> levels of 0.5% by volume. <i>Id.</i> ¶10.	14. Disputed. <i>See</i> ¶11.
15. SCYI never manufactured neat MTBE, which is MTBE in its pure form, not a part, constituent or component of another substance. <i>Id.</i> ¶11. At least since SCYI acquired the Yabucoa Facility, neat MTBE was never manufactured at the Yabucoa Facility. <i>Id.</i> ¶11.	15. Undisputed.
16. SCYI never imported, received or acquired neat MTBE. <i>Id.</i> ¶12. When SCYI owned and operated the Yabucoa Facility, neat MTBE was not imported to the Yabucoa Facility. <i>Id.</i> ¶12.	16. Undisputed.
17. SCYI never blended, mixed, or added MTBE to gasoline or otherwise produced gasoline containing MTBE. <i>Id.</i> ¶13. When SCYI owned and operated the Yabucoa Facility, neat MTBE was never blended, mixed, or added into gasoline produced at the Yabucoa Facility. <i>Id.</i> ¶13.	17. Undisputed, but irrelevant to any issues in this motion.
18. SCYI never stored neat MTBE at the Yabucoa Facility. <i>Id.</i> ¶14.	18. Undisputed.
19. Because SCYI never stored, used, or blended MTBE in the production of gasoline, the Yabucoa Facility is not a site where MTBE	19. Undisputed, but irrelevant to any issues in this motion.

could have been discharged. <i>Id.</i> ¶15.	
20. Pursuant to EPA regulations of fuels and fuel additives, refiners are required to prepare annual written representations regarding the refinery's blending activities ('Management Representation Letters'). <i>Id.</i> ¶16. The Management Representation Letters prepared by SCYI for the years 2002 through 2007 were prepared and maintained in the normal course of business and confirm that SCYI did not blend any oxygenates, including MTBE, into any gasoline. <i>Id.</i> ¶16. Declaration of Ruben F. Reyna ('R. Reyna Decl.') ¶5, Ex. 3, Management Representation Letters for the years 2002 through 2007 (SH-PR-YAB000975 - 977; SH-PR-YAB000978 - 980; SH-PR-YAB000981 - 983; SH-PR-YAB000984-986; SH-PR-YAB000987 - 90; SH-PR-YAB000991 - 95).	20. Undisputed, but irrelevant to any issues in this motion.
21. For every batch of gasoline manufactured at Yabucoa, SCYI also prepared a Reformulated Gasoline and Anti-Dumping Batch Report (EPA Form 3520-20C). J. Lopez Decl. ¶17. On this form, refiners are required to identify the properties of the specific batch of gasoline including, among other properties, the volume percent of MTBE. <i>Id.</i> ¶17. Every Batch Report submitted by SCYI from 2002 through 2008 confirms that Yabucoa only blended conventional gasoline and never used MTBE. <i>Id.</i> ¶17.	21. Undisputed, but irrelevant to any issues in this motion.
22. Between 2002 and 2008, while the Yabucoa Facility was operated as a refinery, SCYI occasionally imported gasoline into the Yabucoa Facility to supplement production in order to meet demand in Puerto Rico, but the imported gasoline generally represented a small part of the total gasoline distributed from the Yabucoa Facility. <i>Id.</i> ¶18. Most of the gasoline sold from the Yabucoa Facility was manufactured from crude refined in the Yabucoa Facility and imported gasoline typically represented no more than 17% and at times, less than 10%. <i>Id.</i> ¶19.	22. Disputed. <i>See</i> ¶11.
23. Moreover, the imported gasoline would be stored with other gasoline in the Yabucoa	23. Undisputed, but irrelevant as to any issues in this motion.

<p>Facility. <i>Id.</i> ¶20. The imported gasoline was not segregated from the gasoline manufactured by SCYI. <i>Id.</i> ¶20. In effect, the intermittent shipments of imported gasoline would be blended with the manufactured gasoline. <i>Id.</i> ¶20.</p>	
<p>24. After SCYI ceased refining operations at the Yabucoa Facility in July 2008, SCYI continued to operate the facility as a terminal and imported gasoline for sale from the Yabucoa Facility. <i>Id.</i> ¶21. However, SCYI never imported gasoline that contained MTBE above <i>de minimis</i> trace levels (0.5% vol.). <i>Id.</i> ¶21.</p>	<p>24.</p>
<p>25. The supply contracts controlling the content specifications for gasoline supplied to the Yabucoa Facility specifically prohibited gasoline with MTBE above <i>de minimis</i> trace levels (0.5% vol.). <i>Id.</i> ¶22. R. Reyna Decl. ¶6, Ex. 4, April 2002 Product Sales Agreement between Pecten Chemicals Inc. and SCYI (SH-YAB-ESI 0000814-44); January 2007 Amended and Restated Product Sales Agreement between Shell Chemicals Americas Inc. and SCYI (SH-PR-KS 002040-61).</p>	<p>25. Disputed.</p> <p>Shell Yabucoa has not produced, and does not attach, any of its contracts for the gasoline it imported from US based refiners. There is thus <i>no evidence</i> that these refiners were prohibited from shipping gasoline to Shell Yabucoa above “<i>de minimis</i>” MTBE levels. <i>See</i> ¶ 11. Evidence shows that even <i>de minimis</i> MTBE can cause substantial harm. Plaintiffs Rule 56.1 ¶¶ 17-21.</p>
<p>26. While the supply contracts controlling the content specifications for gasoline supplied to SCYI permitted MTBE up to <i>de minimis</i> trace levels to be present, SCYI did not specify that gasoline it acquired pursuant to these agreements should contain MTBE, and did not otherwise deliberately or intentionally obtain gasoline with MTBE for import into Puerto Rico. J. Lopez Decl. ¶23. Rather, to the extent that gasoline which SCYI acquired contained MTBE at any level, that was only because SCYI had no feasible alternative but to accept gasoline with trace levels of MTBE. <i>Id.</i> ¶23. Some trace amounts of MTBE in some shipments of gasoline received pursuant to the supply contracts were likely inevitable, given that the sources of this supply, mainly refineries in the U.S. Gulf Coast and the St. Croix refinery, produced gasoline with MTBE for delivery to areas of the U.S. where MTBE was used to comply with the federal oxygenate</p>	<p>26. Disputed.</p> <p><i>See</i> ¶¶ 11, 25 and 45.</p>

<p>mandate. <i>Id.</i> ¶23. SCYI did not request or want such trace levels of MTBE in the gasoline it obtained pursuant to the supply contracts. <i>Id.</i> ¶23. Rather, to the extent SCYI received gasoline with low levels of MTBE, that was only because SCYI had no practical or feasible alternative. <i>Id.</i> ¶23.</p>																	
<p>27. Between 2002 and 2010, there were 161 shipments of conventional gasoline imported to the Yabucoa Facility. <i>Id.</i> ¶24. With the exception of a few shipments that contained MTBE below <i>de minimis</i> levels (0.5% vol), those shipments of gasoline did not contain MTBE at all. <i>Id.</i> ¶24.</p>	<p>27. Disputed. <i>See</i> ¶¶11, 25 and 45.</p>																
<p>28. Certificates of analysis (COAs) provide information on the chemical composition of the gasoline shipments. <i>Id.</i> ¶25. The COA Chart Section I, “Yabucoa COA Chart” which summarizes the MTBE data from COAs for the shipments of gasoline imported to the Yabucoa Facility accurately summarizes and represents the data contained in the COAs regarding the MTBE content, if any, in each shipment listed in the Yabucoa COA Chart. <i>Id.</i> ¶25. R. Reyna Decl. ¶7, Ex. 5, COA Chart, Section I, “Yabucoa COA Chart.”</p>	<p>28. Disputed.</p> <p>The chart submitted by Shell Yabucoa does not accurately reflect the total volume of MTBE gasoline imported by Shell Yabucoa because substantial volumes were never tested for MTBE content, and Shell heeled Puerto Rico like the U.S. in terms of its need for MTBE gasoline. <i>See</i> ¶¶11, 25 and 45.</p>																
<p>29. The data in the COAs, as shown in the Yabucoa COA Chart, shows that of the total of 161 shipments of gasoline imported into the Yabucoa Facility, COAs were located for 135 shipments. J. Lopez Decl. ¶26. Of those 135 shipments, 127 (94%) contained no MTBE at all and only 8 (6%) contained MTBE, all at levels which are a fraction of the <i>de minimis</i> level of 0.5% by volume. <i>Id.</i> ¶26. More specifically, the 8 shipments that contained any MTBE contained the following percentages by volume of MTBE:</p> <table border="1" data-bbox="224 1577 760 1883"> <thead> <tr> <th>Shipment Date</th><th>MTBE Content</th></tr> </thead> <tbody> <tr> <td>6/25/2004</td><td>0.02%</td></tr> <tr> <td>7/15/2004</td><td>0.02%</td></tr> <tr> <td>1/7/2005</td><td>0.17%</td></tr> <tr> <td>2/20/2007</td><td>0.11%</td></tr> <tr> <td>2/20/2007</td><td>0.04%</td></tr> <tr> <td>12/21/2008</td><td>0.08%</td></tr> <tr> <td>12/17/2009</td><td>0.16%</td></tr> </tbody> </table>	Shipment Date	MTBE Content	6/25/2004	0.02%	7/15/2004	0.02%	1/7/2005	0.17%	2/20/2007	0.11%	2/20/2007	0.04%	12/21/2008	0.08%	12/17/2009	0.16%	<p>29. Disputed.</p> <p><i>See</i> ¶28.</p>
Shipment Date	MTBE Content																
6/25/2004	0.02%																
7/15/2004	0.02%																
1/7/2005	0.17%																
2/20/2007	0.11%																
2/20/2007	0.04%																
12/21/2008	0.08%																
12/17/2009	0.16%																



12/24/2009	0.10%	
<i>Id.</i> ¶26.		
30. Because imported gasoline would have been stored in the same tanks with gasoline manufactured at the Yabucoa Facility or other batches of imported gasoline, the MTBE content of these shipments, in all likelihood, would have been diluted prior to sale or distribution from the Yabucoa Facility. <i>Id.</i> ¶27.		30. Disputed. Shell Yabucoa does not provide any inventory records or other documentation that substantial volumes of imported gasoline were, in fact, commingled with gasoline manufactured by Shell Yabucoa. As the table reflects, many of the imported shipments were well over 100,000 BBLs.
31. From 2002 through November 2003 and from September 2006 to December 2010, SCYI supplied gasoline to the Shell Company Puerto Rico Limited (SCPRL), now known as Sol Puerto Rico Limited, which is a separate defendant in this case. <i>Id.</i> ¶28.		31. Disputed.  Shell Yabucoa not only supplied Shell PR, but undertook to supply service stations directly. <i>See</i> ¶ 9.
32. The supply agreement between SCYI and Sol (f/k/a SCPRL) contained product specifications that explicitly prohibited supplying gasoline with MTBE above <i>de minimis</i> trace levels (0.5% vol). <i>Id.</i> ¶29. R. Reyna Decl. ¶8, Ex. 6, August 31, 2006 Non-Exclusive Sales Contract for Branded Products between SCYI and Sol (f/k/a SCPRL) (SH-PR 000001-18); Amended and Restated Non-Exclusive Sales Contract for Branded Products between SCYI and Sol (f/k/a SCPRL) (SH-PR-SP000017-59).		32. Undisputed, but irrelevant to any issue in this motion.
33. In October 2003, SCYI entered into a Marketing and Distribution Services Agreement (“Agreement”) with Sol (f/k/a SCPRL) whereby Sol agreed to provide marketing and distribution services in connection with the sale of products in Puerto Rico. J. Lopez Decl. ¶30. In connection with the Agreement, any supply agreements that Sol had with individual gasoline service stations in Puerto Rico were assigned to SCYI. <i>Id.</i> ¶30. Also in connection with the Agreement, SCYI purchased any gasoline that Sol had in inventory at the Cataño Terminal as of November 1, 2003. <i>Id.</i> ¶30.		33. Undisputed.  <i>See</i> ¶ 9.
34. For a relatively brief time after November 1, 2003, SCYI received imported gasoline shipments into the Cataño Terminal. <i>Id.</i> ¶31. In total, SCYI received 29 shipments		34. Undisputed.



into the Cataño Terminal. <i>Id.</i> ¶31.							
<p>35. The COA Chart Section II, “Cataño COA Chart” which summarizes the MTBE data from COAs for the shipments of gasoline imported to the Cataño Terminal accurately summarizes and represents the data contained in the COAs regarding the MTBE content, if any, in each shipment listed in the Cataño COA Chart. <i>Id.</i> ¶32. R. Reyna Decl. ¶7, Ex. 5, COA Chart, Section II, “Cataño COA Chart.”</p>	35. Undisputed.						
<p>36. The data in the COAs, as shown in the Cataño COA Chart, shows that of the total of 31 shipments of gasoline imported into the Cataño Terminal, COAs were located for all 31 shipments, 29 (94%) contained no MTBE and only 2 (6%) contained MTBE, both at levels below the <i>de minimis</i> level of 0.5% by volume. J. Lopez Decl. ¶33. More specifically, the 2 shipments that contained any MTBE contained the following percentages by volume of MTBE:</p> <table border="1" data-bbox="224 940 760 1087"> <thead> <tr> <th>Shipment Date</th><th>MTBE Content</th></tr> </thead> <tbody> <tr> <td>1/29/2004</td><td>0.11%</td></tr> <tr> <td>2/23/2004</td><td>0.21%</td></tr> </tbody> </table> <p><i>Id.</i> ¶33.</p>	Shipment Date	MTBE Content	1/29/2004	0.11%	2/23/2004	0.21%	36. Undisputed.
Shipment Date	MTBE Content						
1/29/2004	0.11%						
2/23/2004	0.21%						
<p>37. Because these two shipments of gasoline would have been stored in the same tanks with other shipments of gasoline with no MTBE at all, the MTBE content of these two shipments would likely have been diluted prior to sale or distribution from the Cataño Terminal. <i>Id.</i> ¶34.</p>	<p>37. Disputed.</p> <p>Shell Yabucoa does not provide any inventory records or other documentation that substantial volumes of imported gasoline were, in fact, commingled with non-MTBE gasoline.</p>						
<p>38. The Yabucoa Facility has never been included in any of Plaintiffs’ lists of sites at issue in this litigation. R. Reyna Decl. ¶12.</p>	38. Undisputed.						

### **Shell Oil Company**

<b>DEFENDANTS’ UNDISPUTED MATERIAL FACTS AND ALLEGED SUPPORTING EVIDENCE</b>	<b>PLAINTIFFS’ RESPONSE AND EVIDENCE</b>
<p>39. SOC does not own or operate any facilities to make, store, or distribute gasoline, including refineries, terminals, distribution systems and gasoline service stations, in Puerto Rico, nor has it ever done so. Declaration of Patrick Bloomer (“P. Bloomer Decl.”) ¶2.</p>	<p>39. Undisputed, but irrelevant to any issue in this matter.</p> <p>Shell Oil does not have to own or operate any retail facilities in Puerto Rico to be liable for MTBE contamination in Puerto Rico. The</p>

	evidence contained in Plaintiff's Rule 56.1 ¶ 1-13 shows that Shell Oil supplied substantial amounts of MTBE gasoline which was delivered to the Shell Trial Site and all Shell stations in Puerto Rico.
40. SOC never owned or operated any refining or manufacturing facilities in Puerto Rico. <i>Id.</i> ¶3.	40. Undisputed, but irrelevant to any issue in this matter.
41. SOC never owned or operated any underground storage tanks, service stations or other gasoline storage facilities in Puerto Rico, and never handled gasoline in Puerto Rico, with or without MTBE, and therefore could never have caused a release of gasoline in Puerto Rico, with or without MTBE. <i>Id.</i> ¶4.	41. Undisputed, but irrelevant to any issue in this matter. <i>See</i> ¶ 39.
42. Prior to 1996, SOC owned the Norco Refinery ('Norco') in Louisiana. <i>Id.</i> ¶5.	42. Disputed.  Shell's own declarations state that Shell Oil owned Norco from 1992 to 1998, and then it was owned by Motiva from 1998 to the present. (O'Reilly Decl., Ex. 4 at 2.)
43. Based on anecdotal information, Norco provided at least one and possibly as many as a half-dozen shipments of conventional gasoline to Sol (f/k/a SCPRL) at some point between 1995 and 1998. <i>Id.</i> ¶6.	43. Disputed.  The evidence shows that Norco was blending substantial quantities of MTBE, including MTBE it manufactured, into all types of gasoline during the 1995 to 1998 time period. <i>See</i> ¶ 3. The evidence shows that the MTBE content varied from 0% to 11.23%, and was even as high as 15.44%. (Barnhart Decl. Ex. 2, Bloomer Depo. at 49:22-23, 50:16-51:10, 52:23-53:7, 106:1-107:18, 130:1-15.) Bloomer was thus unable to deny that Norco shipped MTBE gasoline to Shell PR. (Id.) Shell PR records show that Shell PR was importing MTBE gasoline until the mid-1990s. <i>See</i> ¶ 3.
44. Batch reports are created and maintained by refineries to track the chemical composition of the gasoline manufactured at the facility. <i>Id.</i> ¶7. The Norco Batch Report Charts provide the chemical composition data, particularly the MTBE content, for each batch of conventional gasoline manufactured at Norco from 1995 to 1998. <i>Id.</i> ¶7. R. Reyna Decl. ¶10, Ex. 8, Norco Batch Report Charts.	44. Disputed. <i>See</i> ¶ 3.

<p>The Norco Batch Report Charts confirm that, Norco manufactured both conventional gasoline with MTBE and conventional gasoline without MTBE. P. Bloomer Decl. ¶ 8.</p>	
<p>45. There is no reason why Norco would have shipped gasoline intentionally blended with MTBE to Puerto Rico. <i>Id.</i> ¶ 9.</p>	<p>45. Disputed.</p> <p>A 2006 draft review of Shell global oxygenate use states that “oxygenates [were] used in [the] Americas . . . [because] countries like . . . Puerto Rico were the same as the U.S., namely the big cities within these countries have high pollution levels and MtBE was added to reduce exhaust emission.” (O’Reilly Decl., Ex. 10.)</p> <p>Defendants’ motion for summary judgment of the Commonwealth’s strict liability claims, asserts that MTBE was the only readily available “octane enhancer” that Shell and other refiners could utilize for gasoline distributed to Puerto Rico. (Rule 56.1 Statement in Support of Certain Defendants’ Motion for Summary Judgment on Plaintiffs’ [sic] Counts I and IV at ¶¶ 19-23.) Defendants assert that, with respect to US refineries, when lead was phased out <u>in 1995</u> “MTBE became the preferred choice of most refiners and blenders” and that <b>“MTBE was typically used as an octane enhancer in conventional gasoline in a concentration in the range of 1-7 Vol. %”</b> (<i>Id.</i> at ¶ 23.) Shell thus asserts to this Court that MTBE was necessary as an octane enhancer for conventional gasoline, the very same type of gasoline that was purportedly shipped to Puerto Rico by NORCO starting in 1995. Shell’s own judicial admission thus directly contradicts Shell purportedly “undisputed” fact that there was no reason Shell would have shipped MTBE gasoline to Puerto Rico from 1995 to 1998. <i>See also</i> ¶ 3.</p>
<p>46. SOC is the general partner of Deer Park Refining L.P., which operates a refinery located at Deer Park, Texas (“Deer Park”). <i>Id.</i> ¶ 10. Between 2002 and 2008, Deer Park intermittently supplied gasoline to the Yabucoa Facility. <i>Id.</i> ¶ 10. However, Deer Park never sent the Yabucoa Facility gasoline that</p>	<p>46. Disputed.</p> <p>The Commonwealth’s expert and other evidence demonstrates that 0.5% MTBE in millions of barrels of gasoline translates into millions of gallons of pure MTBE. Thus, a release of gasoline with 0.5% MTBE to groundwater contains over 416,000 times the</p>

contained MTBE above <i>de minimis</i> trace levels (0.5% vol.). <i>Id.</i> ¶ 10.	limit set in Puerto Rico's cleanup standard. Plaintiffs Rule 56.1 ¶¶ 17-21.
47. The supply contracts controlling the content specifications for gasoline supplied to the Yabucoa Facility specifically prohibited gasoline with MTBE above <i>de minimis</i> trace levels (0.5% vol). <i>Id.</i> ¶ 11. <i>See</i> ¶ 24 supra. These contracts controlled the content specifications for gasoline supplied to the Yabucoa Facility from Deer Park. P. Bloomer Decl. ¶ 11.	47. Disputed as irrelevant. <i>See</i> ¶ 46.
48. Accordingly, gasoline sent from Deer Park to the Yabucoa Facility could not and did not contain MTBE above <i>de minimis</i> levels (0.5% vol.). <i>Id.</i> ¶ 12.	48. Undisputed, but irrelevant to any issue in this motion. <i>See</i> ¶ 46.
49. While the supply contracts controlling the content specifications for gasoline supplied to SCYI permitted MTBE up to <i>de minimis</i> trace levels to be present, SCYI did not specify that gasoline it acquired from Deer Park should contain MTBE. <i>Id.</i> ¶ 13. Deer Park did not otherwise deliberately or intentionally supply gasoline with MTBE to SCYI. <i>Id.</i> ¶ 13. Rather, to the extent that gasoline which Deer Park supplied SCYI contained MTBE at any level, that was only because Deer Park had no feasible alternative but to supply gasoline with trace levels of MTBE. <i>Id.</i> ¶ 13. Some trace amounts of MTBE in some shipments of gasoline from Deer Park were likely inevitable, given that Deer Park produced gasoline with MTBE for delivery to areas of the U.S. where MTBE was used to comply with the federal oxygenate mandate and also for delivery to Mexico where MTBE was used. <i>Id.</i> ¶ 13. Deer Park did not want such trace levels of MTBE in the gasoline it supplied to SCYI. <i>Id.</i> ¶ 13. Rather, to the extent Deer Park supplied gasoline with low levels of MTBE to SCYI, that was only because Deer Park had no practical or feasible alternative. <i>Id.</i> ¶ 13.	49. Disputed. <i>See</i> ¶ 45.
50. Generally, it would never make sense for a refiner to blend a <i>de minimis</i> level of MTBE into gasoline. <i>Id.</i> ¶ 14. Gasoline blended to meet oxygenate regulations would normally contain MTBE in the range of 10 to	50. Disputed. <i>See</i> ¶ 49.

<p>12%. <i>Id.</i> ¶14. Hence, the existence of trace amounts of MTBE in gasoline most likely results from the presence of MTBE in some component or components of the refining or distribution systems, such as lines, tanks, vessels, barges, or the like, which inadvertently mixes with ordinary gasoline. <i>Id.</i> ¶14.</p>							
<p>51. Between 2002 and 2008, Deer Park sent 22 shipments to the Yabucoa Facility. <i>Id.</i> ¶15. During that time period, Deer Park sent only two shipments that contained MTBE at any level. <i>Id.</i> ¶15. Those two shipments contained MTBE well below <i>de minimis</i> levels (0.5% vol.). <i>Id.</i> ¶15.</p>	<p>51. Disputed.</p> <p>The chart submitted by Shell does not accurately reflect the total volume of MTBE gasoline imported from Deer Park because substantial volumes were never tested for MTBE content.</p>						
<p>52. The COA Chart Section I, ‘Yabucoa COA Chart’ which summarizes the MTBE data from COAs for the shipments of gasoline imported to the Yabucoa Facility accurately summarizes and represents the data contained in the COAs regarding the MTBE content, if any, in each shipment listed in the Yabucoa COA Chart. <i>Id.</i> ¶16. <i>See</i> ¶27 <i>supra</i>.</p>	<p>52. Disputed.</p> <p><i>See</i> ¶¶28, 49, and 51. Evidence shows that even <i>de minimis</i> MTBE can cause substantial harm. Plaintiffs Rule 56.1 ¶¶ 17-21.</p>						
<p>53. The data in the COAs, as shown in the Yabucoa COA Chart, shows that of the total of 22 shipments of gasoline Deer Park sent to the Yabucoa Facility, COAs were located for 20 shipments. P. Bloomer Decl. ¶17. Of those 20 shipments, 18 (90%) contained no MTBE at all and 2 (10%) contained MTBE below the <i>de minimis</i> level of 0.5% by volume. <i>Id.</i> ¶17. More specifically, the 2 shipments that contained any level of MTBE contained the following percentages by volume of MTBE:</p> <table border="1" data-bbox="228 1398 764 1545"> <thead> <tr> <th>Shipment Date</th><th>MTBE Content</th></tr> </thead> <tbody> <tr> <td>6/25/2004</td><td>0.02%</td></tr> <tr> <td>7/15/2004</td><td>0.02%</td></tr> </tbody> </table> <p><i>Id.</i> ¶17.</p>	Shipment Date	MTBE Content	6/25/2004	0.02%	7/15/2004	0.02%	<p>53. Disputed.</p> <p>The two shipments with MTBE at 0/2% contained 200,000 ppb of MTBE which is well above water cleanup standards. <i>See also</i> ¶¶28, 49, and 51.</p>
Shipment Date	MTBE Content						
6/25/2004	0.02%						
7/15/2004	0.02%						
<p>54. The COAs confirm that the shipments of gasoline from Deer Park to the Yabucoa Facility either did not contain MTBE at all or only contained MTBE below <i>de minimis</i> levels (0.5% vol.). <i>Id.</i> ¶18.</p>	<p>54. Disputed. <i>See</i> ¶¶ 28, 49, and 51.</p>						
<p><b>Motiva Enterprises LLC</b></p> <p><b>DEFENDANTS’ UNDISPUTED MATERIAL FACTS AND ALLEGED</b></p>							
<p><b>PLAINTIFFS’ RESPONSE AND EVIDENCE</b></p>							

SUPPORTING EVIDENCE	
55. Motiva is a Delaware limited liability company that owns and operates certain refining and marketing assets in the Western United States contributed by Shell Oil Company, Saudi Refining Inc. and Texaco Refining and Marketing (East) Inc. upon its formation in July 1998. <i>Id.</i> ¶ 19. These assets include refineries, terminals, and certain Shell- and Texaco-branded gasoline stations in the Eastern United States, including Norco. <i>Id.</i> ¶ 19.	55. Undisputed.
56. Motiva currently is owned by subsidiaries of Shell Oil Company and Saudi Refining Inc. <i>Id.</i> ¶ 20. Motiva does not own or operate any facilities to make, store, or distribute gasoline, including refineries, terminals, distribution systems and gasoline service stations, in Puerto Rico, nor has it ever done so. <i>Id.</i> ¶ 20.	56. Undisputed, but irrelevant as to any issue in this motion.
57. Motiva never owned or operated any refining or manufacturing facilities in Puerto Rico. <i>Id.</i> ¶ 21.	57. Undisputed, but irrelevant as to any issue in this motion.
58. Motiva never owned or operated any underground storage tanks, service stations or other gasoline storage facilities in Puerto Rico, and never handled gasoline in Puerto Rico, with or without MTBE, and therefore could never have caused a release of gasoline in Puerto Rico, with or without MTBE. <i>Id.</i> ¶ 22.	58. Undisputed, but irrelevant as to any issue in this motion.
59. Between 2002 and 2007, Norco provided intermittent supply of gasoline to the Yabucoa Facility. <i>Id.</i> ¶ 23. During that time period, Norco supplied only two shipments that contained MTBE at any level. <i>Id.</i> ¶ 23. Those two shipments contained MTBE well below <i>de minimis</i> levels (0.5% vol.). <i>Id.</i> ¶ 23.	59. Disputed.  The chart submitted by Shell does not accurately reflect the total volume of MTBE gasoline imported from Deer Park because substantial volumes were never tested for MTBE content. <i>See also</i> ¶ 28, 49, 51.
60. The supply contracts governing the imports to the Yabucoa Facility also controlled the content specifications for gasoline supplied to the Yabucoa Facility from Norco. <i>Id.</i> ¶ 24. The product specifications in those contracts explicitly prohibited supplying gasoline with levels of MTBE above <i>de minimis</i> levels (0.5% vol.). <i>Id.</i> ¶ 24. <i>See</i> ¶ 24 <i>supra</i> .	60. Disputed. <i>See</i> ¶¶ 11, 25, and 45.
61. While the supply contracts controlling	61. Disputed. <i>See</i> ¶¶ 11, 25, and 45.

<p>the content specifications for gasoline supplied to SCYI permitted MTBE up to <i>de minimis</i> trace levels to be present, SCYI did not specify that gasoline it acquired from Norco should contain MTBE. <i>Id.</i> ¶25. Norco did not otherwise deliberately or intentionally supply gasoline with MTBE to SCYI. <i>Id.</i> ¶25. Rather, to the extent that gasoline which Norco supplied SCYI contained MTBE at any level, that was only because Norco had no feasible alternative but to supply gasoline with trace levels of MTBE. <i>Id.</i> ¶25. Some trace amounts of MTBE in some shipments of gasoline from Norco were likely inevitable, given that Norco produced gasoline with MTBE for delivery to areas of the U.S. where MTBE was used to comply with the federal oxygenate mandate. <i>Id.</i> ¶25. Norco did not want such trace levels of MTBE in the gasoline it supplied to SCYI. <i>Id.</i> ¶25. Rather, to the extent Norco supplied gasoline with low levels of MTBE to SCYI, that was only because Norco had no practical or feasible alternative. <i>Id.</i> ¶25.</p>	
<p>62. Between 2002 and 2007, Norco sent 11 shipments to the Yabucoa Facility. <i>Id.</i> ¶26. With the exception of only two shipments that contained MTBE below <i>de minimis</i> levels (0.5% vol.), those shipments of gasoline did not contain MTBE at all. <i>Id.</i> ¶26.</p>	<p>62. Disputed. <i>See</i> ¶ 11, 25, and 45.</p>
<p>63. The COA Chart Section I, “Yabucoa COA Chart” which summarizes the MTBE data from COAs for the shipments of gasoline imported to the Yabucoa Facility accurately summarizes and represents the data contained in the COAs regarding the MTBE content, if any, in each shipment listed in the Yabucoa COA Chart. <i>Id.</i> ¶16. <i>See</i> ¶27 <i>supra</i>.</p>	<p>63. Disputed. <i>See</i> ¶¶ 11, 25, and 45.</p>
<p>64. The data in the COAs, as shown in the Yabucoa COA Chart, shows that of the total of 11 shipments of gasoline Norco sent to the Yabucoa Facility, COAs were located for 7 shipments. P. Bloomer Decl. ¶27. Of those 7 shipments, 5 (71%) contained no MTBE at all and only 2 (29%) contained MTBE below the <i>de minimis</i> level of 0.5% by volume. <i>Id.</i> ¶27. More specifically, the 2 shipments that</p>	<p>64. Disputed. <i>See</i> ¶¶ 11, 25, and 45.</p>



contained any MTBE contained the following percentages by volume of MTBE:

Shipment Date	MTBE Content
2/20/2007	0.11%
2/20/2007	0.04%

*Id.* ¶ 27.

65. The COAs confirm that the shipments of gasoline from Norco to the Yabucoa Facility either did not contain MTBE at all or only contained MTBE below *de minimis* levels (0.5% vol). *Id.* ¶ 28.

65. Disputed. *See* ¶ 11, 25, and 45.

#### **Shell Trading (US) Company**

#### **DEFENDANTS' UNDISPUTED MATERIAL FACTS AND ALLEGED SUPPORTING EVIDENCE**

#### **PLAINTIFFS' RESPONSE AND EVIDENCE**

66. STUSCO is a trading company formed in August 1998. *Id.* ¶ 29. Beginning in December 2010, STUSCO arranged supplies of gasoline from third-parties to Sol (f/k/a SCPRL) for import into Puerto Rico. *Id.* ¶ 29. Prior to December 2010, STUSCO was never involved with gasoline supply to Puerto Rico or any other aspect of the gasoline market in Puerto Rico. *Id.* ¶ 29.

66. Undisputed.

The Commonwealth agrees to dismiss Shell Trading (US) Company.

67. The gasoline supplied by STUSCO did not and does not contain MTBE. *Id.* ¶ 29.

67. Undisputed. *See* ¶ 66.

68. The supply agreements between STUSCO and Sol controlled the content specifications for gasoline supplied to Sol by STUSCO. *Id.* ¶ 30. These contracts specifically prohibited gasoline with MTBE above 0.3% volume, well below *de minimis* levels (0.5% vol.). *Id.* ¶ 30.

68. Undisputed. *See* ¶ 66.

69. STUSCO does not own or operate any gasoline service stations in Puerto Rico, nor has it ever done so. *Id.* ¶ 31.

69. Undisputed. *See* ¶ 66.

70. STUSCO never owned or operated any refining or manufacturing facilities in Puerto Rico, and thus never made gasoline in or for the Puerto Rico market, with or without MTBE. *Id.* ¶ 32.

70. Undisputed. *See* ¶ 66.

71. STUSCO never owned or operated any underground storage tanks, service stations or other gasoline storage facilities in Puerto Rico, and thus never handled gasoline in the Puerto

71. Undisputed. *See* ¶ 66.



Rico market, with or without MTBE. <i>Id.</i> ¶33.	
72. STUSCO never caused a release of gasoline in Puerto Rico, with or without MTBE. <i>Id.</i> ¶34.	72. Undisputed. <i>See</i> ¶ 66.

**Equilon Enterprises LLC**

<b>DEFENDANTS' UNDISPUTED MATERIAL FACTS AND ALLEGED SUPPORTING EVIDENCE</b>	<b>PLAINTIFFS' RESPONSE AND EVIDENCE</b>
73. Equilon is a Delaware limited liability company that owns and operates certain refining and marketing assets in the Western United States contributed by Shell Oil Company and Texaco Refining and Marketing Inc. upon Equilon's formation in January 1998. <i>Id.</i> ¶35. These assets include refineries, terminals, and certain Shell- and Texaco-branded gasoline stations in the Western United States. <i>Id.</i> ¶35. Equilon is now a wholly-owned, indirect subsidiary of Shell Oil Company. <i>Id.</i> ¶35.	73. Undisputed.  The Commonwealth agrees to dismiss Equilon Enterprises.
74. Equilon has never supplied gasoline to Puerto Rico or participated in any other aspect of the gasoline market in Puerto Rico. <i>Id.</i> ¶36. Specifically, Equilon does not own or operate any facilities to make, store, or distribute gasoline, including refineries, terminals, distribution systems and gasoline service stations, in Puerto Rico, nor has it ever done so. <i>Id.</i> ¶36.	74. Undisputed. <i>See</i> ¶ 73.
75. Equilon never made gasoline in or for the Puerto Rico market, with or without MTBE. <i>Id.</i> ¶37.	75. Undisputed. <i>See</i> ¶ 73.
76. Equilon never owned or operated any underground storage tanks, service stations or other gasoline storage facilities in Puerto Rico, and thus never handled gasoline in the Puerto Rico market, with or without MTBE. <i>Id.</i> ¶38.	76. Undisputed. <i>See</i> ¶ 73.
77. Equilon never caused a release of gasoline in Puerto Rico, with or without MTBE. <i>Id.</i> ¶39.	77. Undisputed. <i>See</i> ¶ 73.

**TMR Company**

<b>DEFENDANTS' UNDISPUTED MATERIAL FACTS AND ALLEGED SUPPORTING EVIDENCE</b>	<b>PLAINTIFFS' RESPONSE AND EVIDENCE</b>
78. TMR was formerly known as Texaco Refining and Marketing Inc. and is the	78. Undisputed.

successor by merger to defendant Texaco Refining and Marketing (East) Inc. <i>Id.</i> ¶40. In 2002, the stock of Texaco Refining and Marketing (East) Inc. was acquired by affiliates of Defendant Shell Oil Company. <i>Id.</i> ¶40. Thereafter, Texaco Refining and Marketing (East) Inc. became known as TRME Company and was merged into TMR. <i>Id.</i> ¶40. TMR no longer engages in active operations. <i>Id.</i> ¶40.	The Commonwealth agrees to dismiss TMR Company.
79. TMR has never been involved with gasoline supply to Puerto Rico or any other aspect of the gasoline market in Puerto Rico. <i>Id.</i> ¶41. Specifically, TMR does not own or operate any facilities to make, store, or distribute gasoline, including refineries, terminals, distribution systems and gasoline service stations, in Puerto Rico, nor has it ever done so. <i>Id.</i> ¶41.	79. Undisputed. <i>See</i> ¶ 78.
80. TMR never owned or operated any refining or manufacturing facilities in Puerto Rico, and thus never made gasoline in or for the Puerto Rico market, with or without MTBE. <i>Id.</i> ¶42.	80. Undisputed. <i>See</i> ¶ 78.
81. TMR never owned or operated any underground storage tanks, service stations or other gasoline storage facilities in Puerto Rico, and thus never handled gasoline in the Puerto Rico market, with or without MTBE. <i>Id.</i> ¶43.	81. Undisputed. <i>See</i> ¶ 78.
82. TMR never caused a release of gasoline in Puerto Rico, with or without MTBE. <i>Id.</i> ¶44.	82. Undisputed. <i>See</i> ¶ 78.

**Shell International Petroleum Company Limited**

<b>DEFENDANTS' UNDISPUTED MATERIAL FACTS AND ALLEGED SUPPORTING EVIDENCE</b>	<b>PLAINTIFFS' RESPONSE AND EVIDENCE</b>
83. SIPC is a UK company. Declaration of Ian Charman ("I. Charman Decl.") ¶2.	83. Undisputed.
84. SIPC does not own or operate any facilities to make or store gasoline, including refineries, terminals, distribution systems and gasoline service stations, in Puerto Rico, nor has it ever done so. <i>Id.</i> ¶3.	84. Disputed.  The Commonwealth's undisputed evidence shows that, prior to 2006, Shell Int'l had involvement in the operation of retail stations owned by Shell PR in Puerto Rico. Shell Caribbean and Central America cluster, which oversaw Puerto Rico, approved expenditures

	for replacement and upgrades to USTs in Puerto Rico. Shell Int'l also imposed health, safety, and environmental guidelines on Shell PR, and required Shell PR to operate its business in accordance with Shell Int'l policies. <i>See</i> Plaintiffs 56.1 ¶¶ 1-13.
85. SIPC never owned or operated any refining or manufacturing facilities in Puerto Rico, and thus never made gasoline in or for the Puerto Rico market, with or without MTBE. <i>Id.</i> ¶4. SIPC never owned or operated any underground storage tanks, service stations or other gasoline storage facilities in Puerto Rico, and thus never handled gasoline in the Puerto Rico market, with or without MTBE. <i>Id.</i> ¶4. SIPC never caused a release of gasoline in Puerto Rico, with or without MTBE. <i>Id.</i> ¶4.	85. Disputed. <i>See</i> ¶ 84.
86. Prior to 1995, Sol (f/k/a SCPRL) was supplied, in part, from a refinery on the island of Curaçao. <i>Id.</i> ¶5. Until 1985, when the refinery was sold to the Netherlands Antilles' Government, Shell Curaçao NV (SCNV) owned and operated the refinery and sales were made by SCNV directly to SCPRL. <i>Id.</i> ¶5.	86. Undisputed. <i>See</i> ¶ 84.
87. In 1985, after the sale by Shell, the refinery was leased by the Venezuelan state-owned company Petróleos de Venezuela S.A., or PDVSA. <i>Id.</i> ¶6. PDVSA used their affiliate company, Maraven, to operate the refinery until 1997, after which date PDVSA took over direct operating control of the refinery. <i>Id.</i> ¶6.	87. Undisputed. <i>See</i> ¶ 84.
88. For the ten-year period, from 1985 until 1995, a division of SIPC known as Shell International Trading Company (SITCO) provided trading and supply services whereby it acquired gasoline from a third party and supplied that gasoline to Sol (f/k/a SCPRL). <i>Id.</i> ¶7. More specifically, during this period prior to 1995, SIPC acquired gasoline from the Curaçao refinery and supplied that gasoline to Sol (f/k/a SCPRL). <i>Id.</i> ¶7. The title, or ownership, of the gasoline passed to Sol (f/k/a SCPRL) at the loading dock in Curaçao. <i>Id.</i> ¶7. Sol (f/k/a SCPRL) in turn imported that gasoline into Puerto Rico and supplied gasoline to Shell-branded service stations in	88. Disputed.  The gasoline delivered to Shell PR from the Curaçao refinery was purchased by a division of Shell Int'l and then delivered to Shell PR so Shell Int'l was in the direct chain of supply. The evidence demonstrates, moreover, that all of this gasoline was distributed as Shell 'branded gasoline' to Shell stations in Puerto Rico, including the Shell Trial Site. <i>See</i> ¶ 3.

<p>Puerto Rico. <i>Id.</i> ¶7. SIPC did not deliver gasoline directly to Puerto Rico and did not own, store or distribute gasoline in Puerto Rico. <i>Id.</i> ¶7.</p>	
<p>89. Almost all of the gasoline that SIPC supplied for delivery to Puerto Rico was acquired from the Curaçao refinery. <i>Id.</i> ¶8. Sol (f/k/a SCPRL) always took title to the gasoline SIPC supplied outside of Puerto Rico, typically, if not always, at the loading dock of the Curaçao refinery. <i>Id.</i> ¶8.</p>	<p>89. Undisputed, but irrelevant as to issue raised in this motion. <i>See</i> ¶ 88.</p>
<p>90. Prior to 1985, the Curaçao refinery did not use MTBE. <i>Id.</i> ¶9. Diagrams and descriptions of the facilities of the Curaçao refinery after 1985 do not indicate the existence of facilities there for the manufacture, storage or blending of MTBE. <i>Id.</i> ¶9.</p>	<p>90. Disputed.</p> <p>The declaration submitted by Shell does not identify a single document purportedly reviewed by the witness, nor were these “documents” produced by Shell in discovery in this matter. The “testimony” by Charman, therefore, is purely speculative, hearsay, and entirely inadmissible. Shell, moreover, never asserted in its discovery responses that the Curacao refinery did not utilize MTBE to produce gasoline thus depriving the Commonwealth of the opportunity to conduct discovery on this issue. Evidence that has been produced in discovery by other defendants, to the contrary, shows that MTBE was present at substantial concentrations in 1991-1992. <i>See</i> ¶ 3.</p>
<p>91. SIPC was not the sole supplier of gasoline to Sol (f/k/a SCPRL) prior to 1995. <i>Id.</i> ¶10. To the contrary, Sol acquired gasoline from other sources unrelated to Shell during and after that period. <i>Id.</i> ¶10. R. Reyna Decl. ¶ 4, Ex. 2, Plaintiffs’ Supplemental Responses to Defendants’ First Set of Contention Interrogatories and Requests for Production of Documents, Interrogatory No. 2, pp. 19-21 (Mar. 14, 2014); <i>Id.</i> ¶2, Ex. 1, Declaration of Dario E. Amadeo, ¶¶6-7.</p>	<p>91. Undisputed, but irrelevant to any issue in this motion.</p> <p>The evidence unequivocally shows that Shell Int’l was in the direct chain of supply for MTBE gasoline to Shell PR for well over a decade, that Shell Int’l was contractually obligated to supply substantial quantities of gasoline to Shell PR on a daily basis (3,000 barrels per day of premium and 5,000 barrels per day regular gasoline), and that numerous shipments of gasoline supplied by Shell Int’l to Shell PR contained substantial quantities of MTBE. <i>See</i> ¶ 3.</p>
<p>92. From January 1995 to September 1997, Sol (f/k/a SCPRL) purchased gasoline directly from HOVIC, another defendant in this case.</p>	<p>92. Disputed.</p> <p>As explained in ¶ 3, the evidence shows that Shell Int’l had not cancelled its evergreen</p>

I. Charman Decl. ¶ 10.	contract with Shell PR, that Shell Int'l routinely purchased gasoline from HOVIC for Shell PR, and Shell Int'l admitted in discovery that it supplied gasoline to Shell PR "up to" 1998. Shell Int'l admits in ¶ 89 that even though Shell Int'l bought the gasoline Shell PR took title at the Hovic refinery.
93. Furthermore, the volume of gasoline SIPC supplied to SCPRL declined during the time period between 1985 and 1995. <i>Id.</i> ¶ 11.	93. Disputed. <i>See</i> ¶ 92.
94. Therefore, even if gasoline with MTBE had been delivered to Sol or to Shell-branded stations in Puerto Rico prior to 1995, that gasoline with MTBE could have, and in all likelihood must have, come from a supplier other than SIPC. <i>Id.</i> ¶ 12.	94. Disputed.  Shell Int'l does not submit any competent evidence in support of this statement. Shell Int'l can no longer produce any analytical statements or data proving that MTBE was not present in gasoline supplied by Shell Int'l to Shell PR. Shell Int'l instead asks the Court to draw inferences from the lack of data which is improper. Mr. Charman's declaration is inadmissible because it is based on speculation, hearsay, and lacks foundation. Mr. Charman, for example, is attempting to opine about the present or lack of MTBE at the Curacao refinery for a time period when he did not work there. Shell Int'l's assertion is directly contradicted by the evidence set forth in ¶ 3.

**Shell Western Supply and Trading Limited**

<b>DEFENDANTS' UNDISPUTED MATERIAL FACTS AND ALLEGED SUPPORTING EVIDENCE</b>	<b>PLAINTIFFS' RESPONSE AND EVIDENCE</b>
95. Shell West is a Barbados company. <i>Id.</i> ¶ 13.	95. Undisputed.
96. Shell West does not own or operate any facilities to make or store gasoline, including refineries, terminals, distribution systems and gasoline service stations, in Puerto Rico, nor has it ever done so. <i>Id.</i> ¶ 14. Shell West never owned or operated any refining or manufacturing facilities in Puerto Rico, and thus never made gasoline in or for the Puerto Rico market, with or without MTBE. <i>Id.</i> ¶ 15.	96. Undisputed, but irrelevant to any issue in this motion.  The evidence set forth in ¶ 3 shows that Shell Western was a substantial source of MTBE gasoline delivered to Shell PR, which was then distributed to Shell stations, including the Shell Trial Site. Shell Western is thus in the direct chain of supply.
97. Shell West never owned or operated any underground storage tanks, service stations or other gasoline storage facilities in Puerto Rico, and thus never handled gasoline in the	97. Undisputed, but irrelevant to any issue in this motion.

Puerto Rico market, with or without MTBE. <i>Id.</i> ¶15. Shell West never caused a release of gasoline in Puerto Rico, with or without MTBE. <i>Id.</i> ¶15.	
98. Between September 1997 and October 2003, Shell West provided trading and supply services, similar to those previously provided by SIPC, to Sol (f/k/a SCPRL). <i>Id.</i> ¶16. Also between November 2003 and October 2004, and between September 2008 and December 2010, Shell West provided similar services to SCYI. <i>Id.</i> ¶16. Shell West did not deliver gasoline directly to Puerto Rico, and did not own, store or distribute gasoline in Puerto Rico. <i>Id.</i> ¶16.	98. Disputed. <i>See</i> ¶¶3 and 98.
99. All of the gasoline that Shell West supplied to Sol (f/k/a SCPRL) and nearly all of the gasoline Shell West supplied to SCYI for delivery to Puerto Rico was acquired from the St. Croix refinery, which was owned and operated by other defendants in this case, HOVIC and HOVENSA. <i>Id.</i> ¶17. Sol (fka SCPRL) and SCYI always took title to the gasoline Shell West supplied outside of Puerto Rico, typically if not always at the loading dock of the St. Croix refinery. <i>Id.</i> ¶17.	99. Undisputed, but irrelevant to any issue in this motion. <i>See</i> ¶¶3 and 98.
100. Between September 1997 and December 2010, Shell West supplied 516 shipments of gasoline to Sol (f/k/a SCPRL) and 140 shipments of gasoline to SCYI mainly from and at the St. Croix refinery. <i>Id.</i> ¶18.	100. Undisputed.  The evidence shows that a substantial number of these shipments contained MTBE. <i>See</i> ¶ 3.
101. The COA Chart Section III, 'Shell West COA Chart' which summarizes the MTBE data from COAs for the shipments of gasoline that Shell West supplied to both Sol (f/k/a SCPRL) and SCYI accurately summarizes and represents the data contained in the COAs regarding the MTBE content, if any, in each shipment listed in the Shell West COA Chart. <i>Id.</i> ¶19. R. Reyna Decl. ¶7, Ex. 5, COA Chart, Section III, 'Shell West COA Chart.'	101. Disputed  The evidence shows that a substantial number of these shipments contained MTBE. <i>See</i> ¶ 3.
102. The data in the COAs, as shown in the Shell West COA Chart, shows that of the total of 656 shipments of gasoline that Shell West supplied to Sol (f/k/a SCPRL) and SCYI for delivery to Puerto Rico, COAs were located	102. Disputed.  Shell Western's chart demonstrates that MTBE was present in at approximately 25% of the shipments. Additional evidence shows that, in



for 638 shipments; of those 638 shipments, 477 (75%) contained no MTBE at all, 151 (24%) contained MTBE below the *de minimis* level of 0.5% by volume; and only 10 contained MTBE above the *de minimis* level. I. Charman Decl. ¶20. Even then, the 10 shipments that contained MTBE above *de minimis* levels were only slightly above the threshold of 0.5% by volume. *Id.* ¶20. More specifically, those shipments contained the following percentages by volume of MTBE:

Shipment Date	MTBE Content
4/11/1998	2.43%
4/11/1998	2.60%
4/23/1998	1.43%
4/23/1998	1.44%
11/26/1998	3.93%
11/26/1998	4.30%
4/20/2000	0.70%
10/14/2000	0.58%
8/29/2003	0.66%
9/12/2003	0.68%

*Id.* ¶20.

fact, a substantial number of these shipments contained MTBE. *See* ¶ 3.

103. All 10 shipments were obtained from the St. Croix refinery of defendants HOVIC and HOVENSA and were provided to Sol (f/k/a SCPRL) at that refinery. *Id.* ¶21. Shell West merely arranged the purchase and sale. *Id.* ¶21.

103. Undisputed, but irrelevant to any issue in this motion. *See* ¶¶3 and 98.

104. The data in the COAs, as shown in the Shell West COA Chart, shows that the combined shipments of all gasoline that Shell West supplied to Sol (f/k/a SCPRL) and SCYI for delivery to Puerto Rico contained only trace levels of MTBE on average, well below the *de minimis* level of 0.5% by volume. *Id.* ¶22. The average MTBE content of all these shipments of gasoline was only 0.08% by volume. *Id.* ¶22.

104. Disputed. Even at an average concentration of 0.8%, gasoline supplied by Shell Western contained approximately 800,000 ppb of MTBE which is several orders of magnitude greater than Puerto Rico's water cleanup standard of 12 ppb. *See also* ¶¶ 3 and 98. *See also* Plaintiffs Rule 56.1 ¶¶ 14-21.

105. Shell West followed an express policy of not supplying MTBE gasoline into Puerto Rico. *Id.* ¶23. As an example, Shell West acquired a cargo destined for Puerto Rico in May 2002, but discovered that the cargo contained MTBE. *Id.* ¶23. Upon considering

105. Disputed.

Shell Western fails to explain that the "express policy" was not adopted until 2002.

<p>the question whether the shipment could be delivered to Puerto Rico under the applicable company policy, Shell West concluded that the shipment should not be delivered to Puerto Rico because that would have offended company policy, and thus the shipment was diverted elsewhere. <i>Id.</i> ¶23.</p>	
<p>106. Throughout the period when Shell West supplied gasoline for delivery into Puerto Rico, the only economically viable source of gasoline for import to Puerto Rico was the St. Croix refinery. <i>Id.</i> ¶24. Shell West did not specify that gasoline it acquired from the St. Croix refinery should contain MTBE, and did not otherwise deliberately or intentionally obtain gasoline with MTBE for delivery into Puerto Rico. <i>Id.</i> ¶24. Rather, to the extent that gasoline which Shell West acquired from the St. Croix refinery contained MTBE at any level, that was only because Shell West had no feasible alternative but to accept gasoline with trace levels of MTBE. <i>Id.</i> ¶24. Some trace amounts of MTBE in some shipments of gasoline from the St. Croix refinery were likely inevitable, given that the St. Croix refinery produced gasoline with substantial volumes of MTBE for delivery to areas of the U.S. where MTBE was used to comply with the federal oxygenate mandate. <i>Id.</i> ¶24. Shell West did not request or want such trace levels of MTBE in the gasoline it obtained from the St. Croix refinery. <i>Id.</i> ¶24. Rather, to the extent Shell West received gasoline with low levels of MTBE from the St. Croix refinery, that was only because Shell West had no practical or feasible alternative. <i>Id.</i> ¶24.</p>	<p>106. Disputed.</p> <p>The Commonwealth disputes Shell Western's assertion that St. Croix was the only viable source. As demonstrated by the Commonwealth's opposition to defendants' motion for summary judgment based on lack of causation, gasoline was routinely imported to Puerto Rico from a number of sources across the Caribbean, South and Central America, as well as the United States.</p> <p>The evidence shows that, in fact, numerous shipments <u>did contain</u> MTBE. Shell Western does not deny that it received copies of shipping information showing that the gasoline it purchased for Shell PR contained MTBE. Thus, even though Shell Western knew that the gasoline it supplied Shell PR, Shell Western did nothing to obtain alternative supplies to prevent MTBE gasoline from being shipped to Shell PR until 2002.</p>
<p>107. Shell West entered supply contracts with HOVIC/HOVENSA. <i>Id.</i> ¶25. From September 1997 through May 2002 and from March 2003 through July 2004, the supply contracts governing the gasoline Shell West supplied to SCPRL were made on an annual term basis. <i>Id.</i> ¶25. At other times, the supply contracts between Shell West and SCPRL or SCYI were made on a spot basis. <i>Id.</i> ¶25. None of these supply contracts ever contained</p>	<p>107. Disputed.</p> <p>Shell Western's contracts did not prohibit the addition of MTBE to gasoline purchased for Shell PR. Shell's own witness admitted that the Colonial codes referenced in these agreements specifically permit the use of oxygenates such as MTBE. <i>See</i> ¶ 3.</p>

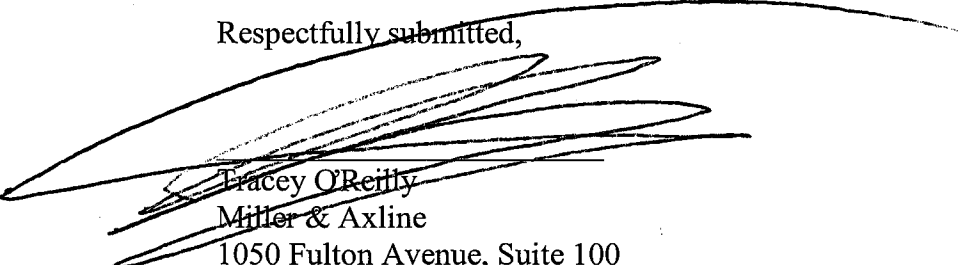


<p>any specifications calling for MTBE. <i>Id.</i> ¶25. With regard to the quality of gasoline, the contracts typically referenced Colonial Pipeline specifications which themselves stated ‘Oxygenate Allowed,’ and ‘This product may, but is not required to, contain blends of aliphatic ethers.’ <i>Id.</i> ¶25. Hence, the Colonial Pipeline specifications referenced in the Shell West supply contracts did not call for MTBE. <i>Id.</i> ¶25.</p>	
<p><b><u>General Statements of Fact</u></b></p>	
<p><b>DEFENDANTS’ UNDISPUTED MATERIAL FACTS AND ALLEGED SUPPORTING EVIDENCE</b></p>	<p><b>PLAINTIFFS’ RESPONSE AND EVIDENCE</b></p>
<p>108. Plaintiffs admit that none of the Shell Defendants, other than SCYI, owned, operated, or controlled any facility in Puerto Rico. <i>Id.</i> ¶9, Ex. 7, Plaintiffs’ Revised Responses to Shell’s First Requests for Admissions, Responses 1-6, 12-14, 20-25, 31-33, 39-44, 50-52, 57-62, 68-70, 75-80, 86-88, 93-98, 104-106, 111-116.</p>	<p>108. Undisputed, but irrelevant to any issues in this motion.</p>
<p>109. Plaintiffs admit that SOC, Motiva, STUSCO, Equilon, and TMR never owned or operated any sites in Puerto Rico, and never made or stored gasoline in Puerto Rico with or without MTBE, and never directly delivered gasoline to any service station in Puerto Rico. <i>Id.</i> ¶9, Ex. 7, Plaintiffs’ Revised Responses to Shell’s First Requests for Admissions, Responses 50-52, 54, 57-63, 65, 68-70, 72, 75-81, 83, 86-88, 90, 93-99, 101, 104-106, 108, 111-117, 119, 122-124, 126.</p>	<p>109. Disputed.</p> <p>As stated in ¶ 2, <i>supra</i>, Shell Int’l was intimately involved with the day-to-day operations of Shell PR.</p>
<p>110. Plaintiffs admit that their claims pursuant to the Resource Conservation and Recovery Act only apply to Defendants that owned or operated sites or equipment. R. Reyna Decl. ¶4, Ex. 2, Plaintiffs’ Second Supplemental Responses to Defendants’ First Set of Contention Interrogatories, Interrogatory No. 19, pp. 14-15 (Feb. 7, 2014).</p>	<p>110. Disputed.</p> <p>See Plaintiffs Rule 56.1 ¶¶ 18-25.</p>
<p>111. No Plaintiffs’ expert has traced any gasoline containing MTBE from the Shell Defendants to any Trial Sites, or to any site in Puerto Rico. <i>Id.</i> ¶15.</p>	<p>111. Disputed.</p> <p>The Commonwealth is not required to retain an expert to ‘trace’ gasoline. The evidence shows that ALL gasoline supplied by the Shell Defendants was utilized by Shell PR to supply Shell stations in Puerto Rico, including the</p>

	Trial site. <i>See</i> ¶ 3.
112. No fact witness or document traces any gasoline containing MTBE from SCYI to any Trial Site, or any site in Puerto Rico. <i>Id.</i> ¶ 16.	112. Disputed as irrelevant and a misstatement of the law. <i>See</i> ¶¶ 110 and 111.
113. In 2012, Puerto Rico passed a law prohibiting the import, sale, or distribution of gasoline containing MTBE, but expressly permitted <i>de minimis</i> levels of MTBE up to 0.5% by volume. R. Reyna Decl. ¶ 11, Ex. 9, Puerto Rico Law Number 16-2012, Department of Consumer Affairs ('DACO') Regulation Number 8198, and DACO Administrative Order Number 2012-020.	113. Disputed.  <i>See</i> Pagan Decl. <i>See</i> also Plaintiff's Rule 56.1 ¶ 16.
114. On June 18, 2007, Plaintiffs served a notice on SOC and TMR of their intent to bring a claim for alleged TSCA violations. R. Reyna Decl. ¶ 17, Ex. 10, June 18, 2007 letters from John K. Dema to SOC and TMR.	114. Undisputed.

Dated: November 7, 2014

Respectfully submitted,



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Sacramento, California 95825

Counsel for Plaintiff

**PROOF OF SERVICE VIA LEXISNEXIS FILE & SERVE**

*Commonwealth of Puerto Rico, et al. v. Shell Oil Co., et al.*, United States District Court,  
Southern District of New York Case No. No. 07 Civ. 10470 (SAS)

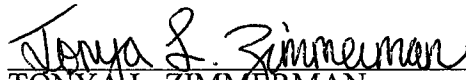
I, the undersigned, declare that I am, and was at the time of service of the paper(s) herein  
referred to, over the age of 18 years and not a party to this action. My business address is 1050  
Fulton Avenue, Suite 100, Sacramento, CA 95825-4225.

On the date below, I served the following document on all counsel in this action  
electronically through LexisNexis File & Serve:

**PLAINTIFF'S RULE 56.1 STATEMENT IN OPPOSITION TO DEFENDANTS' RULE  
56.1 STATEMENT OF MATERIAL FACTS IN SUPPORT OF SHELL DEFENDANTS'  
MOTION FOR SUMMARY JUDGMENT**

I declare under penalty of perjury under the laws of the United States of America and the  
State of California that the foregoing is true and correct.

Executed on November 7, 2014, at Sacramento, California.

  
TONYA L. ZIMMERMAN